had was permission to build a house on Lot 103 and therefore he was a mere licensee, having acquired no equitable title to the land. He was not put into occupation of any defined or demarcated area. There is no evidence that the area of 7,619 square feet now claimed by the second defendant was allotted to or occupied exclusively by his father. There were others who had, with permission, built houses on Lot 103. Furthermore the landowner also lived on Lot 103 and he had access to every nook and corner of his land. There is the evidence of the witness Awang that the landowner plucked coconuts from all the trees on Lot 103. In my opinion the landowner was not only in possession but also in occupation of all his land although some portions of it were being used by others with his permission. The second defendant's father did not have that sort of exclusive occupation to constitute a tenancy at will. He was there with the acquiescence and sanction of the landowner but he was not a tenant at will and certainly not of 7,619 square feet. It follows therefore that section 13 of the Limitation Ordinance has no application.

The burden of proof on the second defendant's claim to ownership of the land in dispute is clearly on him and in my opinion he has failed to discharge the burden. I therefore hold that the title of the plaintiff to the said land is not barred by the Limitation Ordinance. The result is that I entirely reject the second defendant's claim to have acquired ownership of the said land and his counterclaim is therefore dismissed.

As regards the plaintiff's claim, in my opinion he is not entitled to the declaration and injunction which he seeks because I have held that he is not the owner of house No. 556-C. But the plaintiff also claims damages and counsel for the plaintiff submits that if the court holds that the second defendant's father built the house in question, then there must be an order that the second defendant do pay ground rent from the 30th July 1954 up to the date of judgment. In my opinion the plaintiff's claim for ground rent is justified because he had in 1954 demanded rent from the second defendant and had thereby determined the second defendant's licence to stay on the land free of rent. The other ground tenants are paying $5 per mensem and I see no reason why the second defendant should not pay the same amount. There will be an order that the second defendant do pay the plaintiff $5 per mensem as ground rent in respect of the land occupied by him. The period for which arrears of rent or damages in respect thereof can be recovered is limited to six years by section 20 of the Limitation Ordinance. As these proceedings were commenced on the 8th August 1961 the plaintiff cannot recover rent for any period prior to August 1955. The plaintiff is entitled to rent at $5 per mensem from August 1955 until May 1967 which amounts to $710. Accordingly there will be judgment for the plaintiff against the second defendant in the sum of $710 and costs as taxed.

Plaintiff's claim for declaration and injunction disallowed; judgment for plaintiff for ground rent.

Solicitors: *Mallal & Namazie; S. C. Goho & Co.*

SHARIKAT BAKTI v. AMAR SINGH

[O.C.J. (Pawan Ahmad J.) May 16, 1967]

[K.L. — Civil Suit No. 411 of 1966]

Land — Possession claimed for unlawful occupation — Paying of rent to a third person — Whether agent of the owners — Question of fact — Owner's conduct when amounts to estoppel.

The plaintiffs having puchased a piece of land at a public auction from Mohamed Isa and Habsah the joint administrator and administratrix of the estate of one Jamiah, discovered that defendant was in unlawful occupation of seven temporary houses on the land. The defendant claimed that he was in lawful occupation of the said land by regularly paying rent to one Mohamed Junid. As a result of this dispute the plaintiffs commenced the present action against the defendant. At the trial counsel for both parties agreed that the court need only decide the following two issues: (1) whether Mohamed Junid was authorised as agent to grant tenancy and bind the estate, (2) if Mohamed Junid acted without authority, whether the conduct of silence for more than ten years by administrators would estop them from denying that the defendant was the tenant.

The burden of proving the first issue was on the defendant to prove that Mohamed Junid was agent of the estate in creating a lawful tenancy which would bind them.

Held: an administrator derives his title from the court and has no title until letters of administration are granted to him. However, once letters of administration have been granted the administrator may ratify acts done after the death but before the grant and for the benefit of the estate. In the present case there was no direct evidence to show that Mohamed Isa or Habsah had at any time either before or after the grant of letters of administration expressly authorised the defendant to occupy the said land. There was also no direct evidence that they appointed Mohamed Junid as their agent in the transaction entered into between Mohamed Junid and the defendant or that that transaction was subsequently expressly ratified by any of them. Moreover, the subsequent acts and conduct of Mohamed Isa after the grant of the letters of administration clearly proved that he intended to take action against all the unlawful occupants of the said land. Nor could it therefore be said that from the conduct of Mohamed Isa it could be inferred that he had ratified the transaction entered into by Mohamed Junid with the defendant. Therefore, on the balance of probabilities, the defendant had failed to discharge the burden of proof on the first issue.

On the second issue for the defendant to succeed he must establish a state of facts which would estop the administrators from denying the tenancy of the defendant.

Held: Mohamed Isa did not know that the defendant was paying any ground rent to Mohamed Junid. In the circumstances there was no duty on the part of

Mohamed Isa to give any notice to the defendant, therefore the defendant also failed on the second issue.

Cases referred to:—

(1) *Ardeshir Mama* v. *Flora Sassoon* L.R. 55 I.A. 360.

(2) *Foster* v. *Bates* (1843), 152 E.R. 1180, 1183.

(3) *Kechik & Ors.* v. *Habeeb Mohamed & Anor.* [1963] M.L.J. 127.

(4) *Greenwood* v. *Martin's Bank* [1933] A.C. 51.

(5) *Jones Bros. (Holloway) Ltd.* v. *Woodhouse* [1923] 2 K.B. 117.

(6) *Fung Kai Sun* v. *Chan Fui Hing & Ors.* [1951] A.C. 489.

CIVIL SUIT.

L. P. Thean (*Francis Kay* with him) for the plaintiffs.

Chan Siew Yoon for the defendant.

Cur. Adv. Vult.

Pawan Ahmad J.: The plaintiffs are the proprietors of the land known as Lot 4759 in the Mukim of Batu, District of Kuala Lumpur, situate at 4¼ mile-stone Jalan Ipoh, Kuala Lumpur. For purposes of convenience, I shall hereinafter refer to this piece of land as "the said land".

The plaintiffs purchased the said land on 25th November, 1965 at a public auction from Mohamed Isa bin Mohamed Amin (P.W.2) and Habsah binti Mohamed Amin the joint administrator and administratrix of the estate of one Jamiah binti Haji Abdul Rahman. Soon after the transaction the plaintiffs discovered that the defendant was in possession of 7 temporary houses on the said land and was occupying it unlawfully. Acting on the instructions of the plaintiffs, their solicitors served a notice dated 10th January, 1966 (P.2) on the defendant to vacate the said land.

The defendant in reply sent a letter (P.3) contending that he was lawfully occupying the said land as he was regularly paying ground rent to Mohamed Junid (D.W.2). As a result of this dispute the plaintiffs filed the present action against the defendant.

At the trial counsel for both parties by consent narrowed down the issues of dispute and agreed that the court need only decide on the following two issues:—

1. Whether Mohamed Junid bin Mohamed Amin was authorised as the agent for the administrators to the estate of Jamiah binti Haji Abdul Rahman to grant or create a tenancy in favour of the defendant so as to bind the said administrators.

2. Assuming that Mohamed Junid bin Mohamed Amin had acted without the authority of the administrators, whether the administrators by remaining silent for more than 10 years can be held to have been estopped from denying that the defendant is the tenant.

The burden of proving the first issue falls clearly upon the defendant in view of *Sarkar* on Evidence, 11th edition, under the heading of "Agent" at page 881 and the case of *Ardeshir Mama* v. *Flora Sassoon.*[1]

The facts on which the court has been called to determine this issue are based mainly on the evidence of the defendant himself. Defendant states that one day when he was at Ipoh Road, Kuala Lumpur, he saw a number of temporary houses being erected on the said land and on enquiries made by him he discovered that it belonged to the mother of Mohamed Junid (D.W.2) and Mohamed Junid was the person who could give the authority to occupy it.

As he was interested in putting up some houses, he approached Mohamed Junid for a piece of the said land. Mohamed Junid personally took him there and showed him a swampy plot close to the railway lines which was available at an annual ground rent of $120. He told Mohamed Junid that the ground rent was too expensive but Mohamed Junid refused to reduce the amount and so nothing happened.

However, four or five days later he went to see Mohamed Junid again in order to get a reduction on the ground rent but again he failed because Mohamed Junid told him that he alone could not reduce the ground rent because the land was owned jointly by him and his brothers and sisters. As a result of this explanation given by Mohamed Junid the defendant readily accepted the offer and immediately paid Mohamed Junid $120 as one year's ground rent in advance. After that, sometime in late 1954 or early 1955 the defendant began to fill up the swampy plot of land and to build six houses on the site. It took him about 3 months to build the six houses and he spent $10,000 on them.

Defendant went on to say that he knows Mohamed Junid's younger brother, Mohamed Isa bin Mohamed Amin (P.W.2) and during the period of 3 months when his 6 houses were under construction, Mohamed Isa came there on 4 or 5 occasions, either alone or in the company of a lady but Mohamed Isa did not speak to him on any of those occasions.

The defendant said that in 1958 Mohamed Isa came and nailed a number plate to the door of each of his six houses and he had to pay $1 for each of these number plates to Mohamed Isa. On this occasion Mohamed Isa also told him that he was the person who had authority over the said land. The defendant then asked him if he should now pay the annual ground rent to him but Mohamed Isa replied that he could continue to pay the ground rent to Mohamed Junid. The defendant is in possession of the ground rent receipts issued by Mohamed Junid.

The defendant said that he subsequently built his seventh house on the said land after obtaining permission from Mohamed Junid. He went on to say that he had been in undisturbed possession of his seven houses from the day they were built until 10th January, 1966 when he received a notice to vacate (P.3) from plaintiffs' solicitors.

Mohamed Isa (P.W.2) said that he and his eldest sister Habsah binti Mohamed Amin received the grant of letters of administration of the estate of their mother Jamiah binti Haji Abdul Rahman on 27th January, 1955 and the grant of letters of administration was extracted on 1st June, 1955.

He said that neither he nor Habsah had at any time appointed Mohamed Junid as their agent or authorised him to deal with the said land. Mohamed Isa also said that he did not at any time tell anyone that Mohamed Junid was his agent. He was also not aware that Mohamed Junid was receiving any ground rent from the defendant and that he too had not received any ground rent from Mohamed Junid or from the defendant.

Mohamed Isa went on to say that he had a full time job as a bookbinder at the Government Printing Department, Kuala Lumpur and, as such he had very little time to visit or manage the said land. He denied that he knew the defendant before, or that he saw him on the site or that he saw defendant's houses under construction. He added that when he visited the said land in 1958 he found that the six houses owned by the defendant had already been constructed and he never saw them under construction. He admitted visiting the said land in 1958 and he went there to nail number plates to the pillars of the houses illegally built on the said land including defendant's houses so that he would be able to identify the occupants.

About 2 years after he had received his grant of letters of administration, Mohamed Isa said that he intended to take action against all the unlawful occupants but on the instruction of his solicitors he took action only against 15 occupants of the said land for unlawful occupation. There were several other unlawful occupants on the said land at that time but he did not know if defendant was one of them. He did not take action against all the unlawful occupants because his solicitors advised him to proceed against them in groups and not against all of them at one time. In the meantime he was negotiating for the sale of the said land because he had no plans for development of the said land.

Mohamed Isa also denied that he met the defendant on the said land when he visited it in 1958 to nail the number plates to the houses and he also denied that on this occasion he told the defendant that he was in authority over the said land and that the defendant could continue to pay the ground rent to Mohamed Junid.

Mohamed Isa said that during this period he was not on good terms with Mohamed Junid and it was therefore, in my view, unlikely that he would have told the defendant to continue paying the ground rent to Mohamed Junid. He had also taken the trouble to nail the number plates to the houses and if he wanted to collect rent one would expect him to ask the defendant to pay the rent to him and not to Mohamed Junid. The rent receipts produced by the defendant also show that they were issued by Mohamed Junid in his personal capacity and not as the agent of the administrators.

In his evidence-in-chief the defendant said that he came to know from the occupants that the said land belonged to Mohamed Junid's mother and that Mohamed Junid was the person who could give the authority to occupy it. However, in his re-examination he contradicted himself by saying that he went to deal with Mohamed Junid because he thought that Mohamed Junid was the owner but it was only after speaking to him that he discovered that he was not the owner. The defendant therefore is not a very reliable witness.

There is also no evidence to show that the ground rents paid by the defendant have been paid into the account of the estate.

The evidence of Mohamed Junid (D.W.2) the only witness called by the defendant is also unreliable as this witness contradicted himself on several occasions. His evidence is in fact favourable to the plaintiffs' case.

Now, an administrator derives his title from the court and has no title until letters of administration are granted to him. However, once letters of administration have been granted the administrator may ratify acts done after the death but before the grant and for the benefit of the estate. The principle is set out in the case of *Foster* v. *Bates* [2] in which Parker B. says:—

> "It is clear that the title of an administrator, though it does not exist until the grant of administration, relates back to the time of the death of the intestate; and that he may recover against a wrong doer who has seized or converted the goods of the intestate after his death, . . . and, when one means to act as agent for another, a subsequent ratification by the other is always equivalent to a prior command; nor is it any objection that the intended principal was unknown, at the time, to the person who intended to be the agent, . . ."

This principle is followed in the case of *Kechik & Ors.* v. *Habeeb Mohamed & Anor.* [3]

Further, on the subject of ratification, *Boustead* on Agency, 12th Edition Article 30 at page 42 states as follows:—

> "The ratification of an act or transaction may be express or implied. A ratification will be implied whenever the conduct of the person, in whose name or on

whose behalf the act or transaction is done or entered into, is such as to show that he intends to adopt or recognise such act or transaction in whole or in part; and in the case of an agent exceeding his authority, may be implied from the mere silence or acquiescence of the principal."

In the present case there is no direct evidence to show that Mohamed Isa or Habsah binti Mohamed Amin has at any time either before or after the grant of letters of administration expressly authorised the defendant to occupy the said land. There is also no direct evidence that they have appointed Mohamed Junid as their agent in the transaction entered into between Mohamed Junid and the defendant or that this transaction was subsequently expressly ratified by any of them. Moreover, in my view, the subsequent acts and conduct of Mohamed Isa after the grant of the letters of administration clearly prove that he intended to take action against all the unlawful occupants of said land. Nor can it therefore be said that from the conduct of Mohamed Isa it can be inferred that he had ratified the transaction entered into by Mohamed Junid with the defendant.

Therefore, on the balance of probabilities, I find that the defendant has failed to discharge the burden of proof on the 1st issue.

On the 2nd issue this is what *Halsbury's* Laws of England, Volume 15 para 449 page 241 has to say:—

"Mere silence or inaction is not, in the absence of a duty to speak, such conduct as amounts to representation. If a person's consent to a particular act is required, he may be under a duty, when he knows that it has been done without his consent, not to stand by for so long that others are induced thereby to do that from which otherwise they might have abstained; and he cannot afterwards question the legality of the act, to the prejudice of those who have so given faith to the fair inference to be drawn from his conduct."

In order for the defendant to succeed on the 2nd issue he has to show that there was a duty on the part of Mohamed Isa to speak and he failed to speak.

The defendant in his evidence did say that when his six houses were being constructed, Mohamed Isa visited the site on 4 or 5 occasions but did not speak to him or tell him that he was building houses on the said land without authority. Moreover the defendant said that on another occasion when Mohamed Isa came to nail the number plates on the doors of his houses Mohamed Isa told him that he was the person who was in authority over the said land and when the defendant told him that he had been paying ground rent in the past to Mohamed Junid and if he should now make the payments to Mohamed Isa, Mohamed Isa's reply was that he could continue to pay to Mohamed Junid.

Mohamed Isa on the other hand denied that he saw the defendant before or that he saw the defendant's houses under construction. He also denied that he told the defendant that he could continue paying the ground rent to Mohamed Junid. As Mohamed Isa had already been granted letters of administration when he went to nail the number plates to the houses on the said land and he was then not on good terms with Mohamed Junid it is therefore unlikely that he would have told the defendant to continue paying the ground rent to Mohamed Junid. In fact according to Mohamed Isa he was not aware that Mohamed Junid was collecting ground rents from the defendant. Further, there is no evidence that the payments made by the defendant to Mohamed Junid have been paid to the estate account.

In the case of *Greenwood* v. *Martin's Bank* [4] the head notes under "Held" reads as follows:—

"*Held*, that the plaintiff owed a duty to the defendants to disclose the forgeries when he became aware of them and so enable the defendants to take steps towards recovering the money wrongfully paid on the forged cheques; . . ."

Clearly there is no such duty in the present case on the part of Mohamed Isa to speak. If the defendant has suffered any loss he has his remedy against Mohamed Junid as the law does not bar him from taking action against Mohamed Junid unlike the case of *Greenwood* v. *Martin's Bank* where the bank was left without any remedy.

The cases of *Jones Brothers (Holloway) Limited* v. *Woodhouse* [5] and *Fung Kai Sun* v. *Chan Fui Hing & Ors.* [6] also show that there is a duty to speak only when one party is aware of the deception practised by another.

In the present case Mohamed Isa did not know that the defendant was paying any ground rent to Mohamed Junid. In the circumstances there was no duty on the part of Mohamed Isa to give any notice to the defendant. Therefore the defendant also fails on the 2nd issue. The present unfortunate circumstances have been due to the negligence of the defendant to make proper enquiries for which he has only himself to blame.

In the light of these circumstances I entered judgment in favour of the plaintiffs.

Judgment for the plaintiffs.

Solicitors: *Shook Lin & Bok; Heng, Chen & Co.*

NYALONG v. THE SUPERINTENDENT OF LANDS & SURVEYS 2ND DIVISION, SIMANGGANG

[O.C.J. (Silke J.) May 31, 1967]

[Kuching — Civil Suit No. K. 12 of 1966]

Dayak Customary Law — "Berimba" land — "Temuda" rights — Inheritable rights — Claimant